

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. AC-2009-20

GREGORY ROBERT MILLER
13405 Hillsdale Road
Valley Center, CA 92082

Certified Public Accountant Certificate No.
35885

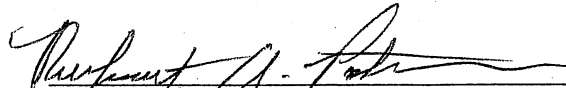
Respondent.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order are hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on 08-30-2009.

It is so ORDERED 07-31-2009.



FOR THE CALIFORNIA BOARD OF
ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

1 EDMUND G. BROWN JR.
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
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Attorneys for Complainant

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9 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. AC-2009-20

12 GREGORY ROBERT MILLER
13 13405 Hillside Road
14 Valley Center, CA 92082

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15 Certified Public Accountant Certificate No.
35885

16 Respondent.

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18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 PARTIES

- 21 1. Patti Bowers (Complainant) is the Executive Officer of the California Board
22 of Accountancy. She brought this action solely in her official capacity and is represented in this
23 matter by Edmund G. Brown Jr., Attorney General of the State of California, by Antoinette B.
24 Cincotta, Deputy Attorney General.
- 25 2. Respondent Gregory Robert Miller (Respondent) is represented in this proceeding by
26 attorney Arthur V. Pearson, whose address is Murphy, Pearson, Bradley & Feeney, 88 Kearny
27 Street, Suite 1000, San Francisco, California 94108-5530.

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3. On or about September 24, 1982, the California Board of Accountancy issued Certificate No. 35885 to Gregory Robert Miller (Respondent). The Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. AC-2009-20 and will expire on September 30, 2010, unless renewed.

JURISDICTION

4. Accusation No. AC-2009-20 was filed before the California Board of Accountancy (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on May 7, 2009. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. AC-2009-20 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. AC-2009-20. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent agrees that his Certificate is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below. Respondent understands and agrees that the charges and allegations in Accusation No. AC-2009-20, if proven at a hearing, constitute cause for imposing discipline upon his Certificate.

9. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest those charges.

10. Respondent agrees that his Certificate is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

RESERVATION

11. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the California Board of Accountancy or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

12. This stipulation shall be subject to approval by the California Board of Accountancy. Respondent understands and agrees that counsel for Complainant and the staff of the California Board of Accountancy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Certificate No. 35885 issued to Respondent Gregory Robert Miller (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. **Actual Suspension.** Certificate No. 35885 issued to Gregory Robert Miller is suspended for ninety (90) days. During the period of suspension the Respondent shall engage in no activities for which certification as a Certified Public Accountant or Public Accountant is required as described in Business and Professions Code, Division 3, Chapter 1, Section 5051.

2. **Obey All Laws.** Respondent shall obey all federal, California, other states' and local laws, including those rules relating to the practice of public accountancy in California.

3. **Submit Written Reports.** Respondent shall submit, within ten (10) days of completion of the quarter, written reports to the Board on a form obtained from the Board. The Respondent shall submit, under penalty of perjury, such other written reports, declarations, and verification of actions as are required. These declarations shall contain statements relative to Respondent's compliance with all the terms and conditions of probation. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

4. **Personal Appearances.** Respondent shall, during the period of probation, appear in person at interviews/meetings as directed by the Board or its designated representatives, provided such notification is accomplished in a timely manner.

5. **Comply With Probation.** Respondent shall fully comply with the terms and conditions of the probation imposed by the Board and shall cooperate fully with representatives of the Board of Accountancy in its monitoring and investigation of the Respondent's compliance with probation terms and conditions.

6. **Practice Investigation.** Respondent shall be subject to, and shall permit, practice investigation of the Respondent's professional practice. Such a practice investigation shall be conducted by representatives of the Board, provided notification of such review is accomplished in a timely manner.

1 7. **Comply With Citations.** Respondent shall comply with all final orders resulting
2 from citations issued by the Board of Accountancy.

3 8. **Tolling of Probation For Out-of-State Residence/Practice.** In the event
4 Respondent should leave California to reside or practice outside this state, Respondent must
5 notify the Board in writing of the dates of departure and return. Periods of non-California
6 residency or practice outside the state shall not apply to reduction of the probationary period, or
7 of any suspension. No obligation imposed herein, including requirements to file written reports,
8 reimburse the Board costs, or make restitution to consumers, shall be suspended or otherwise
9 affected by such periods of out-of-state residency or practice except at the written direction of the
10 Board.

11 9. **Violation of Probation.** If Respondent violates probation in any respect, the Board,
12 after giving Respondent notice and an opportunity to be heard, may revoke probation and carry
13 out the disciplinary order that was stayed. If an accusation or a petition to revoke probation is
14 filed against Respondent during probation, the Board shall have continuing jurisdiction until the
15 matter is final, and the period of probation shall be extended until the matter is final.

16 10. **Ethics Course/Examination.** Respondent shall take and pass with a score of 90
17 percent or better a Board approved ethics examination within six months.

18 If Respondent fails to pass said examination within the time period provided or within two
19 attempts, Respondent shall so notify the Board and shall cease practice until Respondent takes
20 and successfully passes said exam, has submitted proof of same to the Board, and has been
21 notified by the Board that he may resume practice. Failure to pass the required examination no
22 later than 100 days prior to the termination of probation shall constitute a violation of probation.

23 Notwithstanding any other provision of this probation, failure to take and pass this
24 examination within five years of the effective date of this order constitutes a separate cause for
25 discipline of Respondent's license.

26 11. **Active License Status.** Respondent shall at all times maintain an active license
27 status with the Board, including during any period of suspension. If the license is expired at the
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1. time the Board's decision becomes effective, the license must be renewed within 30 days of the
2. effective date of the decision.

3. 12. Cost Reimbursement. Respondent shall reimburse the Board \$7,441.50 for its
4. investigation and prosecution costs. The payment shall be made in quarterly payments (due with
5. quarterly written reports), to run over the first 10 quarters of probation (2.5 years) with payments
6. of \$744.15 per quarter. The final payment being due one year before probation is scheduled to
7. terminate.

8. 13. Completion of Probation. Upon successful completion of probation, Respondent's
9. license will be fully restored.

10. ACCEPTANCE

11. I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
12. discussed it with my attorney, Arthur V. Pearson. I understand the stipulation and the effect it
13. will have on my Certificate. I enter into this Stipulated Settlement and Disciplinary Order
14. voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
15. California Board of Accountancy.

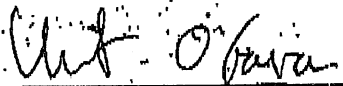
16. DATED: 17. 6-30-09

18. 
19. GREGORY ROBERT MILLER
20. Respondent

21. I have read and fully discussed with Respondent Gregory Robert Miller the terms and
22. conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.

23. I approve its form and content.

24. DATED: 25. 6/30/2009

26. 
27. ARTHUR V. PEARSON
28. Murphy, Pearson, Bradley & Feeney
Attorneys for Respondent

Via O'Garra

ENDORSEMENT

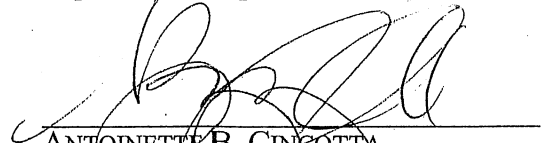
The foregoing Stipulated Settlement and Disciplinary Order are hereby respectfully submitted for consideration by the California Board of Accountancy of the Department of

Consumer Affairs.

Dated: 7/1/2009

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General


ANTOINETTE B. CINCOTTA
Deputy Attorney General
Attorneys for Complainant

SD2009803502

Exhibit A

Accusation No. AC-2009-20

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 ANTOINETTE B. CINCOTTA, State Bar No. 120482
Deputy Attorney General
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6 P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2095
7 Facsimile: (619) 645-2061
8 Attorneys for Complainant

9 **BEFORE THE**
10 **CALIFORNIA BOARD OF ACCOUNTANCY**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. AC-2009-20

14 GREGORY ROBERT MILLER
13405 Hilldale Road
Valley Center, CA 92082

A C C U S A T I O N

15 Certified Public Accountant Certificate No. 35885

16 Respondent.

17
18 Complainant alleges:

19 PARTIES

20 1. Patti Bowers (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Officer of the California Board of Accountancy, Department of
22 Consumer Affairs.

23 2. On or about September 24, 1982, the California Board of Accountancy
24 issued Certificate Number 35885 to Gregory Robert Miller (Respondent). The Certificate was in
25 full force and effect at all times relevant to the charges brought herein and will expire on
26 September 30, 2010, unless renewed.

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JURISDICTION

3. This Accusation is brought before the California Board of Accountancy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code ("Code") unless otherwise indicated.

4. Section 5100 states in relevant part:

"After notice and hearing the board may revoke, suspend, or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

"....

"(c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in the same or different engagements, for the same or different clients, or any combination of engagements or clients, each resulting in a violation of applicable professional standards that indicate a lack of competency in the practice of public accountancy or in the performance of the bookkeeping operations described in Section 5052.

"....

"(g) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter.

"(h) Suspension or revocation of the right to practice before any governmental body or agency."

5. California Code of Regulations, title 16, section 58, provides that licensees engaged in the practice of public accountancy shall comply with all applicable professional standards, including but not limited to generally accepted accounting principles and generally accepted auditing standards.

6. Code of Federal Regulations, title 31, part 10, (also known as Treasury Department Circular No. 230), section 10.22 provides in relevant part:

"(a) In general. A practitioner must exercise due diligence –

1 “(1) In preparing or assisting in the preparation of, approving, and filing tax
2 returns, documents, affidavits, and other papers relating to Internal Revenue Service matters;

3 “(2) In determining the correctness of oral or written representations made by
4 the practitioner to the Department of the Treasury; and

5 “(3) In determining the correctness of oral or written representations made by
6 the practitioner to clients with reference to any matter administered by the Internal Revenue
7 Service.”

8 7. Code of Federal Regulations, title 31, part 10, section 10.51 provides in
9 relevant part:

10 “Incompetence and disreputable conduct for which a practitioner may be
11 censured, suspended or disbarred from practice before the Internal Revenue Service includes, but
12 is not limited to—

13 “....

14 “(f) Willfully failing to make a Federal tax return in violation of the revenue
15 laws of the United States, willfully evading, attempting to evade, or participating in any way in
16 evading or attempting to evade any assessment or payment of any Federal tax, or knowingly
17 counseling or suggesting to a client or prospective client an illegal plan to evade Federal taxes or
18 payment thereof.

19 “....

20 “(l) Giving a false opinion, knowingly, recklessly, or through gross
21 incompetence, including an opinion which is intentionally or recklessly misleading, or engaging
22 in a pattern of providing incompetent opinions on questions arising under the Federal tax laws.
23 False opinions described in this paragraph (l) include those which reflect or result from a
24 knowing misstatement of fact or law, from an assertion of a position known to be unwarranted
25 under existing law, from counseling or assisting in conduct known to be illegal or fraudulent,
26 from concealing matters required by law to be revealed, or from consciously disregarding
27 information indicating that material facts expressed in the tax opinion or offering material are
28 false or misleading. For purposes of this paragraph (l), reckless conduct is a highly unreasonable

1 omission or misrepresentation involving an extreme departure from the standards of ordinary
2 care that a practitioner should observe under the circumstances. A pattern of conduct is a factor
3 that will be taken into account in determining whether a practitioner acted knowingly, recklessly,
4 or through gross incompetence. Gross incompetence includes conduct that reflects gross
5 indifference, preparation which is grossly inadequate under the circumstances, and a consistent
6 failure to perform obligations to the client.

7 COST RECOVERY

8 8. Section 5107 of the Code provides, in pertinent part, that the Board may
9 request the administrative law judge to direct a licensee found to have committed a violation or
10 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
11 and enforcement of the case.

12 FIRST CAUSE FOR DISCIPLINE

13 (Gross Negligence)

14 9. Respondent is subject to disciplinary action under Code section 5100(c),
15 and California Code of Regulations, title 16, section 58 for acts of gross negligence in the
16 practice of public accountancy. These acts violate professional standards, and indicate a lack of
17 competency in the practice of public accountancy. The circumstances are as follows:

18 10. On or about March 24, 2004, Respondent prepared and signed a 2003
19 Federal tax return on behalf of his client J.B., who had retained Respondent to prepare her 2003
20 taxes. J.B. had received \$496,594 from her husband's non-qualified retirement plan account
21 pursuant to a marriage dissolution agreement. Respondent reported \$494,242 of the pension
22 fund distribution as earned income on Schedule C Profit or Loss From Business on J.B.'s 2003
23 income tax return. Respondent reported a deduction of \$100,000 on J.B.'s 2003 tax return as
24 business assets under Section 179, and \$150,000 for a pension plan. The Internal Revenue
25 Service ("IRS") disallowed the Section 179 deduction because there were no business profits.
26 The IRS also disallowed the pension plan deduction because there was no business income.

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